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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,650	09/29/2003	Wilhelmus Petrus Martinus Maria van Erp	CRD5049-US-NP	2353
27777	7590	06/02/2008		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003				
EXAMINER				
MEHTA, BHISMA				
ART UNIT		PAPER NUMBER		
3767				
MAIL DATE		DELIVERY MODE		
06/02/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/673,650

**Applicant(s)**

VAN ERP ET AL.

**Examiner**

BHISMA MEHTA

**Art Unit**

3767

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-3 and 5-10.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Kevin C. Simmons/  
Supervisory Patent Examiner, Art Unit 3767

/Bhisma Mehta/  
Examiner, Art Unit 3767

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments regarding the objection to the specification have been considered but are not deemed persuasive. There is no language in the specification for the proximal ends of the inner and outer tubular bodies being sealed to the hypotube at a point defined proximal to a transition between the intermediate and distal portion of the hypotube. In lines 3-8 of page 5 of the specification, the proximal ends of the inner and outer tubular bodies are disclosed as being sealed at or near the transition. There is no disclosure of the seal being at a point defined proximal to this transition.

Applicant's arguments regarding the prior art rejection of claims 1-3, 5, 6, and 8-10 have been considered but are not deemed persuasive. The proximal ends of the inner and outer tubular bodies of Keith et al are sealed to the hypotube at a point proximal to a transition between the intermediate and distal portions of the hypotube as seen in Figures 2 and 5. The distal portion (115) of Happ et al as seen in Figure 1 has an arcuate non-tubular portion. It is the distal portion (74B) of Keith et al which is being modified to be made with a non-tubular cross-section as taught by Happ et al. Therefore, this modification would still lead to the proximal ends of the inner and outer tubular bodies being sealed to the hypotube at a point proximal to a transition between the intermediate and distal portions of the hypotube. Furthermore, Applicant's reference to the "kink-resistant structure 210 includes coil member 212" is unclear as Applicant does not relate this structure to the structural limitations in the pending claims. Also, Applicant's reference to the "polymeric tubular member 211" of Happ et al is unclear as it is the teaching of the distal portion of Happ et al having an arcuate non-tubular cross-section which is being applied to the Keith et al reference to lower the overall profile of the catheter and to provide increased flexibility, and, thus, it is not clear how this polymeric tubular member can teach away from the combination of the two references.